


Antitrust Enforcement and the Consumer





Many consumers have never heard of antitrust laws, but when these laws are effectively and responsibly enforced, they can save consumers millions and even billions of dollars a year in illegal overcharges. Most states have antitrust laws, and so does the federal government. Essentially, these laws prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for inferior products and services.


This pamphlet was prepared to alert consumers to the existence and importance of antitrust laws and to explain what you can do for antitrust enforcement and for yourself.

1. What Do the Antitrust Laws Do for the Consumer?

Antitrust laws protect competition. Free and open competition benefits consumers by ensuring lower prices and new and better products. In a freely competitive market, each competing business generally will try to attract consumers by cutting its prices and increasing the quality of its products or services. Competition and the profit opportunities it brings also stimulate businesses to find new, innovative and more efficient methods of production.

Consumers benefit from competition through lower prices and better products and services. Companies that fail to understand or react to consumer needs may soon find themselves losing out in the competitive battle.

When competitors agree to fix prices, rig bids or allocate (divide up) customers, consumers lose the benefits of competition. The prices that result when competitors agree in these ways are artificially high; such prices do not



accurately reflect cost and therefore distort the allocation of society's resources. The result is a loss not only to U.S. consumers and taxpayers, but also the U.S. economy.

When the competitive system is operating effectively, there is no need for government intrusion. The law recognizes that certain arrangements between firms -- such as competitors cooperating to perform joint research and development projects -- may benefit consumers by allowing the firms that have reached the agreement to compete more effectively against other firms. The law does not condemn all agreements between companies, only those that threaten to raise prices to consumers or to deprive them of new and better products.

But when competing firms get together to fix prices, to rig bids, to divide business between themselves or to make other anticompetitive arrangements that provide no benefits to consumers, the government will act promptly to protect the interests of American consumers.

2. What Are the Federal Antitrust Laws, and What Do They Prohibit?

There are three major federal antitrust laws: the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act.

The Sherman Antitrust Act has stood since 1890 as the principal law expressing our national commitment to a free market economy in which competition free from private and governmental restraints leads to the best results for consumers. Congress felt so strongly about this commitment that there was only one vote against the Act.

The Sherman Act outlaws all contracts, combinations and conspiracies that unreasonably restrain interstate and foreign trade. This includes agreements among competitors to fix prices, rig bids and allocate customers. The Sherman Act also makes it a crime to monopolize any part of interstate commerce. An unlawful monopoly exists when only one firm controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct. The Act is not violated simply when one firm's vigorous competition and lower prices take sales from its less efficient competitors -- that is competition working properly.

Sherman Act violations involving agreements between competitors usually are punished as criminal felonies. The Department of Justice alone is empowered to bring criminal prosecutions under the Sherman Act. Individual violators can be fined up to \$350,000 and sentenced to up to 3 years in federal prison for each offense. Corporations can be fined up to \$10 million for each offense. Under some circumstances, the fines can go even higher.

The Clayton Act is a civil statute (carrying no criminal penalties) that was passed in 1914 and significantly amended in 1950. The Clayton Act prohibits mergers or acquisitions that are likely to lessen competition. Under the Act, the government challenges those mergers that a careful economic analysis shows are likely to increase prices to consumers. All persons considering a merger or acquisition above a certain size must notify both the Antitrust Division and the Federal Trade Commission. The Act also prohibits other business practices that under certain circumstances may harm competition.

The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties. It also created the Federal Trade Commission to police violations of the Act.

The Department of Justice also often uses other laws to fight illegal activities, including laws that prohibit false statements to federal agencies, perjury, obstruction of justice, conspiracies to defraud the United States and mail and wire fraud. Each of these crimes carries its own fines and imprisonment terms which may be added to the fines and imprisonment terms for antitrust law violations.

3. How Are Antitrust Laws Enforced?

There are three main ways in which the federal antitrust laws are enforced: criminal and civil enforcement actions brought by the Antitrust Division of the Department of Justice, civil enforcement actions brought by the Federal Trade Commission and lawsuits brought by private parties asserting damage claims.

The Department of Justice uses a number of tools in investigating and prosecuting criminal antitrust violations. Department of Justice attorneys often work with agents of the Federal Bureau of Investigation (FBI) or other investigative agencies to obtain evidence. In some cases, the Department may use court authorized searches of businesses and secret recordings by informants of telephone calls and meetings. The Department may grant immunity from prosecution to individuals or corporations who provide timely information that is needed to prosecute others for antitrust violations, such as bid rigging or price fixing.

A provision in the Clayton Act also permits private parties injured by an antitrust violation to sue in federal court for three times their actual damages plus court costs and attorneys' fees. State attorneys general may bring civil suits under the Clayton Act on behalf of injured consumers in their states, and groups of consumers often bring suits on their own. Such civil suits following criminal enforcement actions can be a very effective additional deterrent to criminal activity.

Most states also have antitrust laws closely paralleling the federal antitrust laws. The state laws generally apply to violations that occur wholly in one state. These laws typically are enforced through the offices of state attorneys general.

4. How Do Antitrust Violators Cheat the Consumer?

The worst antitrust offenses are cartel violations, such as price fixing, bid rigging and customer allocation. Price fixing occurs when two or more competing sellers agree on what prices to charge, such as by agreeing that they will increase prices a certain amount or that they won't sell below a certain price. Bid rigging most commonly occurs when two or more firms agree to bid in such a way that a designated firm submits the winning bid, typically for local, state or federal government contracts. Customer-allocation agreements involve some arrangement between competitors to split up customers, such as by geographic area, to reduce or eliminate competition. Such price-fixing, bid-rigging and customer-allocation agreements, unlike joint research agreements for example, provide no plausible offsetting benefits to consumers. Also, these agreements are generally secret, and the participants mislead and defraud customers by continuing to hold themselves out as competitors despite their agreement not to compete.

There can be no doubt that price fixing, bid rigging and customer allocation harm consumers and taxpayers by causing them to pay more for products and services and by depriving them of other byproducts of true competition. Nor is there usually any question in the minds of violators that their conduct is unlawful. It has been estimated that such practices can raise the price of a product or service by more than 10 percent, sometimes much more, and that American consumers and taxpayers pour billions of dollars each year into the pockets of cartel members. People who take consumer and taxpayer money this way are thieves.

5. What Kinds of Cases Has the Justice Department Brought?

Because of the harm that cartel violations cause, the Justice Department's number one antitrust priority is criminal prosecution of those activities. The Department has obtained price-fixing, bid-rigging or customer-allocation convictions in the soft drink, vitamins, trash hauling, road building and electrical contracting industries, among others, involving billions of dollars in commerce. And in recent years, grand juries throughout the country have investigated possible violations with respect to fax paper, display materials, explosives, plumbing supplies, doors, aluminum extrusions, carpet, bread, and many more products and services. The Department also investigates and prosecutes bid rigging in connection with government procurement.

Consider one important example of successful antitrust enforcement -- the Antitrust Division's criminal cases against vitamins producers. The Division began an investigation in the late 1990's into a worldwide vitamins cartel affecting over \$5 billion in U.S. commerce.

The evidence showed that the cartel members had reached agreements on everything from how much product each company would produce, to how much they would charge, to which customers they would supply. The victims who purchased directly from the cartel members included companies with household names such as General Mills, Kellogg, Coca-Cola, Tyson Foods, and Procter & Gamble. However, these companies were just the first to feel the effects of this conspiracy. In the end, for nearly a decade, every American consumer -- anyone who took a vitamin, drank a glass of milk or had a bowl of cereal -- ended up paying more so that the conspirators could reap hundreds of millions of dollars in additional revenues.

The vitamins investigation led to the conviction of U.S., Swiss, German, Canadian and Japanese firms, among others, and a number of top executives went to jail. In fiscal year 1999 alone, over \$850 million in fines was imposed on members of the vitamins cartel, including a record \$500 million fine imposed on F. Hoffmann-La Roche, Ltd. and a \$225 million fine imposed on BASF AG.

The imposition of unprecedented fines against foreign firms and jail sentences against foreign nationals residing outside of this country sends a powerful deterrent message that the United States is committed to vigorous antitrust enforcement against cartels that impact U.S. commerce, no matter where the participants may be found.

6. What Can You Do for Antitrust Enforcement and for Yourself?

Because they are by their nature secret, price-fixing, bid-rigging and customer-allocation conspiracies are difficult to detect and prove. For that reason, law enforcement officials rely on

complaints and information from consumers and competitors. A large percentage of all federal antitrust investigations results from complaints received from consumers or people in business by phone or mail or in person.

On the federal level, you can contact the Antitrust Division at its Washington office or any of its seven field offices, in major metropolitan areas around the country. (Addresses and telephone numbers are provided at the end of this pamphlet.) The Antitrust Division's headquarters offices are in the Main Justice Building at Tenth Street and Pennsylvania Avenue, N.W., in Washington, D.C. You can also reach the Antitrust Division through any of the offices of the United States Attorneys, which are found in most large cities throughout the United States.

7. How Can You Know if the Antitrust Laws Are Being Violated?

If any person knows or suspects that competitors, suppliers or even an employer are violating the antitrust laws, that person should alert the antitrust authorities so that they can determine whether to investigate.

Price-fixing, bid-rigging and customer-allocation conspiracies are most likely to occur where there are relatively few sellers who have to get together to agree. The larger the group of sellers, the more difficult it is to come to an agreement and enforce it.

Keep an eye out for telltale signs, including, for example:

-- any evidence that two or more competing sellers of similar products have agreed to price their products a certain way, to sell only a certain amount of their product or to sell only in certain areas or to certain customers;

-- large price changes involving more than one seller of very similar products of different brands, particularly if the price changes are of an equal amount and occur at about the same time;

-- suspicious statements from a seller suggesting that only one firm can sell to a particular customer or type of customer;

-- fewer competitors than normal submit bids on a project;

-- competitors submit identical bids;

-- the same company repeatedly has been the low bidder on contracts for a certain product or service or in a particular area;

-- bidders seem to win bids on a fixed rotation;

-- there is an unusual and unexplainable large dollar difference between the winning bid and all other bids; or

-- the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

These signs are by no means conclusive evidence of antitrust violations. More investigation by trained lawyers and investigators would be required to determine that. But they may be an indication of collusion, and the people who enforce the antitrust laws want to hear about them.

8. What Is the Public's Role in Antitrust Enforcement?

Effective antitrust enforcement requires public support. Public ignorance and apathy can weaken antitrust enforcement more than anything else. Whether you are a businessperson or a consumer, if you encounter business behavior that appears to violate the antitrust laws, do not hesitate to inform the enforcement authorities of your suspicions. That is often the only way violations can be uncovered, and failing to uncover and punish antitrust violations not only penalizes consumers and taxpayers but also the vast majority of honest businesspeople who scrupulously observe the antitrust laws.

If you detect an antitrust violation, you can perform a triple public service: (1) you can help put an end to unlawful conduct that may be costing consumers millions or even billions of dollars; (2) you can put money in the form of criminal penalties into the federal treasury; and (3) you can help recover other unlawful charges, because the government or affected consumers may bring an antitrust action to collect damages.

You can write or call the Antitrust Division of the Department of Justice at any of the following locations:

Main Justice Building
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-3543

Richard B. Russell Building
75 Spring Street, S.W., Suite 1176
Atlanta, Georgia 30303-3308
(404) 331-7100

Rookery Building
209 South LaSalle Street, Suite 600
Chicago, Illinois 60604-1204
(312) 353-7530

Plaza Nine Building
55 Erieview Plaza, Suite 700
Cleveland, Ohio 44114-1816
(216) 522-4070

Thanksgiving Tower
1601 Elm Street, Suite 4950
Dallas, Texas 75201-4717
(214) 880-9401

26 Federal Plaza, Room 3630
New York, New York 10278-0140
(212) 264-0390

Curtis Center
One Independence Square West
7th & Walnut Streets, Suite 650
Philadelphia, Pennsylvania 19106-2424
(215) 597-7405

450 Golden Gate Avenue
Room 10-0101
Box 36046
San Francisco, California 94102-3478
(415) 436-6660

